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See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

OCT 31 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

SUZANNE BROWN, a married woman,)	2 CA-CV 2011-0039
)	DEPARTMENT B
Plaintiff/Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
LISA FRANK, a single woman; LISA)	Appellate Procedure
FRANK, INC., an Arizona)	
corporation,)	
)	
Defendants/Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CV20102069

Honorable Carmine Cornelio, Judge

AFFIRMED AS MODIFIED

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K E L L Y, Judge.

¶1 Appellant Suzanne Brown appeals from the trial court’s order dismissing for lack of subject matter jurisdiction several claims she made related to a toy oven she claims to have invented. On appeal, Brown argues the court erred in concluding it lacked jurisdiction. She maintains her claims were not preempted by federal patent law, but rather were state law issues properly addressed by the court. Finding no error, we affirm.

Background

¶2 In her verified first-amended complaint, Brown alleged the following facts, which we take as true. *See Dressler v. Morrison*, 212 Ariz. 279, ¶ 2, 130 P.3d 978, 979 (2006) (In reviewing a dismissal pursuant to Rule 12(b), Ariz. R. Civ. P., “we assume the facts alleged in the complaint are true.”). In November 2008, appellee Lisa Frank contacted Brown and asked her to return as an employee of appellee Lisa Frank Incorporated (LFI), where Brown had worked approximately ten years earlier. Brown negotiated the terms of her employment with Frank and accepted an offer in February 2009.

¶3 In May 2009, Brown first mentioned to Frank that she had developed a “children-safe oven.”¹ After collaboration with LFI staff and Frank, Brown produced a sketch of the oven and an outline of its features, which LFI sent to its patent attorney by

¹At oral argument, Brown maintained she had developed the idea for the oven before she went to work for LFI. But there is no indication in the record that Brown discussed the oven with LFI during employment negotiations, and Brown’s employment contract with LFI did not refer to the oven.

electronic mail without copying Brown. The attorney prepared a draft patent application, which was forwarded to Brown without identifying the inventor, and was ultimately filed with the United States Patent and Trademark Office (PTO). LFI also filed a trademark application in relation to the oven, but did not inform Brown. Several months later, LFI terminated Brown's employment.

¶4 Brown brought an action against LFI and Frank in the trial court. Counts one, two, and three of her complaint alleged LFI had breached her employment contract. In count four, Brown requested the court impose a constructive trust on LFI based on its having “wrongfully seiz[ed] possession and control of the Invention . . . Patent . . . and . . . Trademark Properties” related to the oven. Count five alleged conversion against LFI and Frank on the basis that the patent and trademark applications “deprived [Brown] of her common-law rights in the invention” and “of her rights in the Mark.” And in count six, Brown asserted that LFI and Frank “ha[d] been unjustly enriched” through the theft of the invention and trademark. Count seven² alleged Frank had improperly interfered with Brown's employment contract with LFI. Finally, in count eight, Brown sought a declaration that she is the “owner” of the oven as well as the trademark.

¶5 LFI and Frank filed a motion to dismiss counts four through eight “in their entirety . . . for lack of subject matter jurisdiction,” arguing “each allege[d] Federal Patent

²The complaint contains two counts labeled six. We refer to the second as count seven. We refer to the count labeled seven in the complaint as count eight.

and Trademark claims which are preempted under Federal law.”³ After argument, the trial court dismissed counts four, five, six, and eight (“oven-related claims”).

¶6 In its ruling, the trial court determined the oven-related claims were “inextricably interwoven with the issue of inventorship.” It concluded that “to grant [Brown] any of the remedies that she seeks [as to the oven-related claims] would necessarily entail a determination . . . that [Brown] was the inventor,” an issue reserved to the federal courts and the PTO. The court therefore ruled it lacked jurisdiction and Brown must “pursue her remedies through the Federal Administrative agencies or Federal courts.”⁴ Brown filed a motion for reconsideration, which was denied.⁵ This appeal followed.

³LFI and Frank also moved to dismiss these claims against Frank personally because Brown had “fail[ed] to allege . . . [Frank] was acting outside the scope of her authority.” Because we agree with the trial court that it lacked jurisdiction on patent law grounds, we need not address this alternate ground for dismissal.

⁴Using this rationale, the trial court found Brown’s trademark claims were not “ripe” until after a determination by the PTO. Brown does not separately challenge the ripeness ruling, and we therefore do not address it. *See* Ariz. R. Civ. App. P. 13(a)(6) (brief must include “argument which shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on”); *Schabel v. Deer Valley Unified Sch. Dist.* No. 97, 186 Ariz. 161, 167, 920 P.2d 41, 47 (App. 1996) (failure to raise issue on appeal constitutes waiver).

⁵LFI and Frank claim that, prior to the trial court’s entry of judgment, Brown filed a patent application with the PTO asserting she invented the oven. Although it appears the court was not aware of this fact, we take judicial notice that Brown filed a competing patent application based on the application attached to LFI and Frank’s brief. *See State v. McGuire*, 124 Ariz. 64, 66, 601 P.2d 1348, 1349 (App. 1978) (We may take “judicial notice of any matter of which the trial court may take judicial notice.”). It thus appears that Brown understood even before the court entered judgment that she had as a remedy the right to file her own patent application for the oven.

Discussion

¶7 Brown maintains the trial court erred in determining it lacked jurisdiction over the oven-related claims. She contends her claims are valid state law claims not preempted by federal patent law, and that “state courts cannot be deprived of jurisdiction by the private, unilateral act of submitting an invention to the PTO for a patent.” We review the court’s decision de novo. *See Mitchell v. Gamble*, 207 Ariz. 364, ¶ 6, 86 P.3d 944, 947 (App. 2004) (dismissals based on lack of subject matter jurisdiction generally reviewed de novo); *Medina v. Ariz. Dep’t of Transp.*, 185 Ariz. 414, 417, 916 P.2d 1130, 1133 (App. 1995) (trial court’s jurisdiction reviewed independently).

¶8 “Federal law preempts state law under the Supremacy Clause when Congress expressly so provides, the federal law so thoroughly occupies the field that it leaves no room for state law, or state law actually conflicts with federal law.” *Hernandez-Gomez v. Volkswagen of Am., Inc.*, 201 Ariz. 141, ¶ 3, 32 P.3d 424, 425 (App. 2001). As Brown argues, “federal patent law does not preempt the entire field of law regarding inventions and inventors.” *See, e.g., Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 165 (1989) (“[T]he Patent and Copyright Clauses do not . . . deprive the States of the power to adopt rules for the promotion of intellectual creation within their own jurisdictions.”). Rather, states may regulate the area of patents and copyrights to the extent such regulations “do not conflict with the operation of the laws in this area passed by Congress.” *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 479 (1974). Therefore, if the “action is based on conduct that is not ‘protected or governed by federal patent law,’ then ‘the remedy is not preempted.’” *Mass. Eye & Ear Infirmary v.*

QLT Phototherapeutics, Inc., 412 F.3d 215, 234 (1st Cir. 2005), *quoting Hunter Douglas, Inc. v. Harmonic Design, Inc.*, 153 F.3d 1318, 1335 (Fed. Cir. 1998).

¶9 As Brown acknowledges, 28 U.S.C. § 1338 grants the federal courts exclusive jurisdiction over patent cases. It provides: “The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.” § 1338(a). We must therefore determine whether, as Brown asserts, the oven-related claims raise only state law issues that present no conflict with federal patent law, or whether the claims arise under federal patent law, depriving the trial court of jurisdiction.

¶10 Relying primarily on *San Manuel Copper Corp. v. Redmond*, 8 Ariz. App. 214, 445 P.2d 162 (1968), Brown first argues inventors maintain common law rights “independent of federal patent law,” and these rights are “protected by state law and state courts.” She contends her oven-related claims are based on these common law rights, rather than any rights she may obtain through a patent, and therefore are properly brought in state court. In *Redmond*, an employee brought an action for unjust enrichment against his employer, San Manuel, based on its pre-patent use of his invention—a process for smelting copper ore. *Id.* at 215-16, 445 P.2d at 163-64. Redmond had developed the process before he was employed at San Manuel and there was no dispute that he was the inventor. *Id.* Redmond applied for a patent for the process, but while the application was

pending, San Manuel used the process without compensating him. *Id.* at 217, 445 P.2d at 165.

¶11 A jury found in favor of Redmond. *Id.* at 215, 445 P.2d at 163. On appeal, San Manuel argued the state court had lacked jurisdiction to address Redmond’s claim. *Id.* at 217, 445 P.2d at 165. This court disagreed, noting “[a]n inventor has a natural right, recognized by the common law, separate from, and independent of, any constitutional or statutory provision, or any patent grant, to make, use, and sell his invention or discovery.” *Id.*, quoting 69 C.J.S. *Patents* § 2, at 162. And, “[i]n enforcing his common law rights the inventor is not restricted to use of the federal courts.” *Id.* Accordingly, as Brown argues, *Redmond* established inventors have common law rights which may be enforced in state court.

¶12 But, unlike here, in *Redmond* there was no question or dispute about who invented the process, and the court was not asked to determine this issue. *Id.* at 215-16, 445 P.2d at 163-64. Instead, as the trial court noted, *Redmond* “simply stands for the . . . proposition that an inventor who has a patent has a right to recover, in state court . . . compensation for [the] use of his invention while the patent application was pending.”⁶ Therefore, although *Redmond* established that an inventor has common law rights, and

⁶On appeal, Brown argues that Redmond was not the patent holder and therefore the trial court’s reasoning was flawed. As Brown points out, Redmond conveyed his rights to a third-party before the patent was issued. *Redmond*, 8 Ariz. App. at 217, 445 P.2d at 165. But, Redmond’s unjust enrichment claim involved only the use of the process by San Manuel before Redmond conveyed his rights and there was no dispute that Redmond invented the process. *Id.* We therefore find this distinction irrelevant.

that a state court may enforce these rights, it does not address whether a state court may determine inventorship.

¶13 Brown cites authority from other states in support of her argument that “state courts do have jurisdiction to determine these issues and enforce these rights.” But in those cases, as in *Redmond*, the issue of inventorship already had been determined or was merely collateral, leaving only related contract, trade secret, ownership, or other state law claims to be decided. See, e.g., *Plastic & Metal Fabricators, Inc. v. Roy*, 303 A.2d 725, 730 (Conn. 1972) (addressing issue of state trade secret law); *Fletcher-Terry Co. v. Grzeika*, 473 A.2d 1227, 1229 (Conn. App. Ct. 1984) (concluding patent proceeding collateral to main issue of contract law); *Millhollin v. Conveyor Co.*, 954 P.2d 1163, ¶¶ 2-4 (Mont. 1998) (addressing state law breach of contract claim where patent already issued to inventor); *Crucible Chem. Co. v. Burlington Indus., Inc.*, 423 S.E.2d 121, 121-22, 124 (S.C. 1992) (involving patent holder’s suit against licensee for breach of agreement).

¶14 Brown also cites an annotation in the American Law Reports in support of her argument that inventorship may be addressed by a state court. But, the cases cited in the annotation in support of that proposition likewise either do not involve a determination of inventorship, or do so only incidentally to a state law claim. See *Holley v. Hunt*, 56 P.2d 1240, 1241 (Cal. Dist. Ct. App. 1936) (no question of inventorship; action was “simply . . . to prevent appellants from wrongfully using . . . information and ideas which they had received from the [inventor]”); *Harlow v. Feder*, 264 P. 782, 782-83 (Cal. Dist. Ct. App. 1928) (breach of contract claim; contract identified the

inventor); *Smith & Egge Mfg. Co. v. Webster*, 86 A. 763, 764-65 (Conn. 1913) (finding improvement to pencil sharpener had “originated” with plaintiff, although not directly addressing validity of existing patent, in case where defendant employee had stolen model, breached employment agreement, and applied for patent in his own name). Accordingly, although we agree with Brown that state courts may exercise jurisdiction over state law claims where patent issues are collateral to those claims, we cannot agree the authority Brown cites supports her argument that a state court may determine inventorship as a state law issue.

¶15 The federal circuit court of appeals, however, addressed the specific issue of federal and state jurisdiction over claims concerning the true inventor of an invention disclosed in a pending patent application in *HIF Bio, Inc. v. Yung Shin Pharmaceuticals Industrial Co.*, 600 F.3d 1347, 1352-54 (Fed. Cir. 2010). In rejecting the district court’s finding that “rights of inventorship and ownership of inventions . . . are valid state law claims,” the circuit court referenced its earlier decision in which it had held, ““the field of federal patent law preempts any state law that purports to define rights based on inventorship.”” *Id.* at 1351-53, *quoting Univ. of Colo. Found., Inc. v. Am. Cyanamid Co.*, 196 F.3d 1366, 1372 (Fed. Cir. 1999).

¶16 The court explained:

An independent inventorship standard under state law would likely have different requirements and give rise to different remedies than federal patent law. A different state inventorship standard might grant property rights to an individual who would not qualify as an inventor under federal patent law, or might grant greater relief to inventors than is afforded by federal patent law. Either situation might

frustrate the dual federal objectives of rewarding inventors and supplying uniform national patent law standards.

Id. at 1353, quoting *Cyanamid*, 196 F.3d at 1372; see also *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 802 (1988) (“One of Congress’ objectives in creating the Federal Circuit was to reduce the lack of uniformity and uncertainty of legal doctrine in the administration of patent law.”). The court concluded “inventorship is indisputably a question of federal patent law.” *HIF Bio*, 600 F.3d at 1355. Furthermore, contrary to Brown’s assertions, Congress has given the PTO authority to grant a patent to an inventor who files an application.⁷ See 35 U.S.C. § 116 (PTO determines persons to be named as inventor on pending patent application); *Simonton Bldg. Prods., Inc. v. Johnson*, 553 F. Supp. 2d 642, 647 (N.D. W. Va. 2008) (“Courts have consistently interpreted [35 U.S.C. § 116] to mean that only the Director of the PTO may determine who should be named an inventor on a pending patent application.”). And, “[b]ecause inventorship is a unique question of patent law, the cause of action arises under § 1338(a).” *HIF Bio*, 600 F.3d at 1355; see also *Christianson*, 486 U.S. at 808-09 (Section 1338(a) jurisdiction extends to cases in which “patent law is a necessary element of one of the well-pleaded claims.”).

⁷When an application is made for a patent that would interfere with a pending patent application, or an unexpired patent, the PTO may declare an “interference.” 35 U.S.C. § 135(a); *HIF Bio*, 600 F.3d at 1353. When an interference is declared, the Board of Patent Appeals and Interferences has exclusive jurisdiction and “shall determine priority and patentability” of the invention. 35 U.S.C. § 6(b); *Simonton Bldg. Prods., Inc. v. Johnson*, 553 F. Supp. 2d 642, 649 (N.D. W. Va. 2008). An appeal may be taken from the decision of the Board of Patent Appeals and Interferences to the Court of Appeals for the Federal Circuit. 35 U.S.C. § 141.

¶17 “A case arises under the patent laws, and therefore exclusive federal jurisdiction exists, ‘when the plaintiff in his opening pleading . . . sets up a right under the patent laws as ground for a recovery.’” *Arvin Indus., Inc. v. Berns Air King Corp.*, 510 F.2d 1070, 1072 (7th Cir. 1975), *quoting Pratt v. Paris Gas Light & Coke Co.*, 168 U.S. 255, 259 (1897) (alteration in *Arvin Indus.*). But, “[i]f on the face of a well-pleaded complaint there are . . . reasons completely unrelated to the provisions and purposes of [the patent laws] why the [plaintiff] may or may not be entitled to the relief it seeks, then the claim does not arise under those laws.” *HIF Bio*, 600 F.3d at 1354, *quoting Christianson*, 486 U.S. at 810 (alterations in *HIF Bio*). Federal jurisdiction under § 1338, then, “‘extend[s] . . . to those cases in which a well-pleaded complaint establishes either that federal patent law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal patent law, in that patent law is a necessary element of one of the well-pleaded claims.’” *Christianson*, 486 U.S. at 808-09. Thus, if “‘a claim [is] supported by alternative theories in the complaint,’” and patent law is not “‘essential to each of those theories,’” a state court may retain jurisdiction of the matter, as it falls outside of § 1338(a). *Thompson v. Microsoft Corp.*, 471 F.3d 1288, 1292 (Fed. Cir. 2006), *quoting Christianson*, 486 U.S. at 810.

¶18 Despite the Supreme Court’s statement in *Christianson*, Brown claims that *Becher v. Contoure Labs.*, 279 U.S. 388 (1929), conflicts with this standard and that the Court therein explicitly rejected “[t]he notion that state courts are precluded from determining the fact of inventorship, where the determination might affect or even

determine the validity of a patent.” In that case, Becher was employed by plaintiff Oppenheimer as a machinist to construct Oppenheimer’s invention and improvements. *Becher*, 279 U.S. at 389-90. As part of his employment, Becher agreed to keep the information Oppenheimer provided confidential “and not to use it for the benefit of himself or of any other than Oppenheimer.” *Id.* at 390. In violation of this agreement, Becher applied for a patent on the machine “of which Oppenheimer knew nothing until after it had been issued.” *Id.*

¶19 Oppenheimer obtained a judgment against Becher in state court in a suit for “breach of a contract or wrongful disregard of confidential relations.” *Id.* at 389, 391. Becher challenged the state court judgment in federal court, seeking an injunction and arguing the state court lacked jurisdiction, as the validity of the patent was a question for the patent office and federal courts only. *Id.* at 390. The district court denied the request for an injunction. *Id.* The Supreme Court affirmed, holding the state court had jurisdiction to address Oppenheimer’s claims. *Id.* at 390-92. In finding that Oppenheimer’s claims did not “aris[e] under the patent laws,” the Supreme Court explained “[i]t is plain that that suit had for its cause of action the breach of a contract or wrongful disregard of confidential relations, both matters independent of the patent law.” *Id.* at 390-91.

¶20 As Brown points out, the Court rejected the idea “that the assertion of [a state law] right can be removed from the cognizance of [state court] by its opponent going into the patent office for a later title.” *Id.* at 391. Based on this, Brown argues that a state court “cannot be deprived of jurisdiction by the private, unilateral act of

submitting an invention to the PTO for a patent.” And, accordingly, the trial court had jurisdiction to determine inventorship.

¶21 We agree with Brown that a state court’s jurisdiction does not necessarily turn on whether a patent application has been filed. Rather, it is a question of whether the claims raised are based on state law grounds “independent of the patent law,” or whether the claims “arise under those laws.” *Id.* at 391. We do not read *Becher* as standing for the proposition that an initial determination of inventorship is independent of federal patent law. In *Becher*, the issue of inventorship had already been determined by the patent office before Oppenheimer brought suit in state court. *Id.* at 390-91. The state court was therefore not required to make the initial determination of inventorship. Rather, it addressed ownership of the patent in light of the contract between the parties. *Id.* at 389-90. And the Court noted that both the contract and breach of confidential relationship claims were matters of state law that were “independent of the patent law.” *Id.* at 391. Moreover, the Court specifically noted the state court’s finding that Oppenheimer was the owner of the patent only incidentally affected the validity of Becher’s patent. *Id.* The circuit court in *Becher* had based its decision on a similar rationale, holding the state court was not divested of jurisdiction “to compel a wrongdoer to account . . . because the incidental result will be to establish a fact between the parties which affects the validity of a patent.” *Becher v. Contoure Labs.*, 29 F.2d 31, 33 (2d Cir. 1928). We therefore reject Brown’s contention that *Becher* conflicts with the above-stated standards for determining whether a case arises under federal patent law.

¶22 We likewise reject Brown’s argument that the cases setting forth this standard “deal only with the relative powers of the federal courts and the Patent and Trademark Office” and that those cases limit only the jurisdiction of the federal courts, not the jurisdiction of the state courts. Congress has reserved the initial determination of inventorship to the PTO and its jurisdiction is therefore exclusive within the federal system. *See* 35 U.S.C. § 116 (PTO shall determine persons to be named as inventor on pending patent application); *HIF Bio*, 600 F.3d at 1354. But, as explained above, a claim arises under the federal patent law if “the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal patent law,” including that of inventorship, “in that patent law is a necessary element of one of the well-pleaded claims.” *Christianson*, 486 U.S. at 809. Thus, the PTO’s jurisdiction is not only exclusive within the federal system, but it is exclusive as against state courts as well because state courts retain jurisdiction only when the issue of inventorship is incidental to an otherwise valid state law claim.⁸ *See Xechem Int’l, Inc. v. Univ. of Tex. M.D. Anderson Cancer Ctr.*, 382 F.3d 1324, 1332 (Fed. Cir. 2004) (“Although the Federal Circuit has held that inventorship is determined under federal law, state courts can apply federal law to issues properly before the state court.”) (emphasis added) (citation omitted), *citing Speedco, Inc. v. Estes*, 853 F.2d 909, 912-14 (Fed. Cir. 1988) (state court jurisdiction where patent

⁸We also reject Brown’s related argument that a state court has jurisdiction to decide the issue of inventorship because the PTO may never reach that issue, either because no patent application is made or because it rules on other grounds. That an issue is not raised or decided in the appropriate court in a particular case does not alter the rules of jurisdiction. And, as two competing applications for the oven have been filed, the PTO “shall determine priority and patentability” of the invention. 35 U.S.C. § 6(b); *see also HIF Bio*, 600 F.3d at 1353; *Simonton*, 553 F. Supp. 2d at 649.

was “simply the underlying subject of the contractual dispute” and not necessary element of claim).

¶23 Applying that standard here, we conclude Brown’s oven-related claims arise under federal patent law and the trial court therefore did not have jurisdiction over these claims. Brown’s oven-related claims are labeled as causes of action for constructive trust (count four), conversion (count five), unjust enrichment (count six) and declaratory relief (count eight). Brown argues these are traditionally state law causes of action, and, she points out that in *HIF Bio*, the court found similarly labeled causes of action to be properly brought in state court. 600 F.3d at 1354-55. But the label for a particular cause of action is not dispositive. Rather, in establishing whether a claim arises under federal law, “[t]he plaintiff’s opening pleading is determinative.” *Arvin Indus.*, 510 F.2d at 1072. “Whether a cause of action arises under [federal law] must be determined solely from what is contained in the plaintiff’s well-pleaded complaint.” *Lighting Sci. Grp. Corp. v. Koninklijke Philips Elecs. N.V.*, 624 F. Supp. 2d 1174, 1178 (E.D. Cal. 2008); *see also Christianson*, 486 U.S. at 802 (jurisdiction determined by reference to the well-pleaded complaint). The well-pleaded complaint rule “makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by . . . reliance on state law.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987).

¶24 We agree with the trial court that resolution of each of the oven-related claims here, as Brown presented them, is based on a determination of inventorship.⁹ In

⁹In its ruling, the trial court noted that Brown had conceded at oral argument that the basis of all her claims is that she is the inventor of the oven. Brown did not include

count eight, Brown claims a dispute exists “over ownership and inventorship of the invention,” and she “is entitled to a declaration that she is the owner” of the invention. As the court in *HIF Bio* explained, “because this dispute involves *pending* patent applications, the . . . requested relief—a declaration of the ‘true’ inventor—is tantamount to a request for either a modification of inventorship on pending patent applications or an interference proceeding.”¹⁰ 600 F.3d at 1353. This relief “can only be granted by the [PTO].” *Id.*

¶25 Count four alleges “LFI has wrongfully seized possession and control of . . . Brown’s invention . . . and . . . trademark.” Similarly, in count five Brown claims “Defendants have taken [her] efforts, designs, ideas, and invention, and have submitted a patent application asserting inventorship and ownership of the invention.” Count six asserts theft of Brown’s “efforts, designs[,], . . . invention . . . and [trademark].” Although these claims allege state law causes of action, each count relies on allegations of theft of Brown’s invention, ideas, and trademark.

the transcript of this proceeding on appeal. *See* Ariz. R. Civ. App. P. 11(b)(1). As the appellant, Brown was required to “mak[e] certain the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised.” *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). In the absence of a transcript, we must presume the record supports the trial court’s ruling. *Kohler v. Kohler*, 211 Ariz. 106, n.1, 118 P.3d 621, 623 n.1 (App. 2005). Likewise, in her opening brief, Brown appears to concede the “state court might be required to determine whether [she] invented the device” to decide her claims.

¹⁰Although Brown sought a determination of “ownership” rather than inventorship, as discussed, there is nothing in the oven-related claims upon which a state law claim of ownership could be based. Therefore, she essentially asked the trial court to declare her the owner of the oven because she is the inventor.

¶26 In her opening brief, Brown suggests several ways in which the oven-related claims could be proven without reliance on patent law. She argues she could show theft of her “drawings, memoranda[,] . . . plans, and other materials that were involved in the formulation of her invention.” But, in her complaint, Brown did not allege the use or theft of a process or tangible object. *See, e.g., HIF Bio*, 600 F.3d at 1355-56 (plaintiff’s reference to “misappropriation of ‘experiments [and] . . . drafts of papers’” created “alternative, non-patent theory” upon which state law conversion action properly based); *Redmond*, 8 Ariz. App. at 217, 445 P.2d at 165 (alleging use of process while patent pending). Nor did she claim LFI had breached a contract in relation to the oven-related claims.¹¹ *See, e.g., Becher*, 279 U.S. at 391 (alleging violation of contract and confidentiality agreement); *HIF Bio*, 600 F.3d at 1356 (court held “defendants’ alleged failure to keep their promises not to misappropriate . . . the invention” stated non-patent theory). Rather, at the core of the oven-related claims is a dispute over whether Brown invented the oven. Thus, we cannot say that on the face of her complaint “‘there are . . . reasons completely unrelated to the provisions and purposes of [the patent laws] why [she] may or may not be entitled to . . . relief.’” *HIF Bio*, 600 F.3d at 1354, *quoting*

¹¹Brown does raise breach of contract claims, but these claims were not among the oven-related claims dismissed by the court for lack of jurisdiction and do not relate to the issues raised on appeal. While Brown argues on appeal that the complaint alleged “that promises concerning her rights to her invention were included in her employment relationship with LFI,” she did not allege this in the oven-related claims and has pointed to no contract between the parties upon which a state law claim regarding the oven-related claims could be based.

Christianson, 486 U.S. at 810 (first and second alterations in original, remaining alterations added).

¶27 Brown, the master of her complaint, did not set forth state law allegations therein, but rather a claim of inventorship in which her right to recovery necessarily depended on the resolution of a question of patent law. *See Caterpillar Inc.*, 482 U.S. at 392. And, it is the well-pleaded complaint we must consider in determining jurisdiction. *Cf. id.* at 392 (under well-pleaded complaint rule jurisdiction exists only when grounds presented on face of complaint); *Christianson*, 486 U.S. at 802. We therefore conclude Brown’s “right to relief [on the oven-related claims] necessarily depends on the resolution of a substantial question of federal patent law.” *HIF Bio*, 600 F.3d at 1352, *quoting Christianson*, 486 U.S. at 809. Accordingly, the oven-related claims arise under federal law, and the trial court correctly concluded it lacked jurisdiction to address them. *See id.* at 1353.

Disposition

¶28 The judgment of the trial court is affirmed. Noting, however, that the final form of judgment submitted by Brown and signed by the court does not conform to the court’s minute entry ruling in that it dismisses “Counts V, VI and VII” rather than “Counts IV, V, VI, and VII” we remand for amendment of the judgment in keeping with the court’s decision below as affirmed by this court.

¶29 LFI and Frank have requested an award of attorney fees and costs on appeal. They have not provided authority to support their request for fees as required by Ariz. R. Civ. App. P. 21(c)(1). *See Ezell v. Quon*, 224 Ariz. 532, ¶¶ 30-31, 233 P.3d 645,

652 (App. 2010) (Rule 21(c)(1) requires party state basis for requested award of fees). We therefore deny the request for attorney fees. We do, however, award costs to LFI and Frank as the successful parties, contingent on their compliance with Ariz. R. Civ. App. P. 21(a). *See Nangle v. Farmers Ins. Co. of Ariz.*, 205 Ariz. 517, ¶ 34, 73 P.3d 1252, 1258 (App. 2003); *Henry v. Cook*, 189 Ariz. 42, 43-44, 938 P.2d 91, 92-93 (App. 1996).

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge